

When the police beat around the bushes in Toronto's Allan Gardens, they can usually count on filling their nightly quota of indecency busts pretty easily. But one evening two out-of-the-closet gay men decided to give them a surprise.

# GETTING OFF

A narrative of fighting back — and winning. By Andrew Britton

I had been in Toronto five days when it happened.

I'd come here for the second year running at the invitation of film critic Robin Wood — a former colleague in England, and now head of Fine Arts at Atkinson College at York University — to teach a summer course in Film Studies. I was looking forward to meeting old friends and getting to know better a city I already liked.

On the evening of Wednesday, July 4, I went out to dinner with a close friend I'd known in England. We left the restaurant at about 1:15 AM (his parting words were, I now remember, "Take it easy!") and, as it was a beautiful evening and I was feeling quite high after a fair amount to drink, I thought I'd go for a walk. We'd been eating at a restaurant on Church Street, and a five-minute stroll brought me to Allan Gardens.

Allan Gardens, I later learned, is one of Toronto's oldest parks, opened to the public as a botanical garden in the nineteenth century by one of the city's powerful landowners. A patch of green the size of a large city block and

dominated by a sprawling Victorian conservatory, the park has always been a focus for the colourful street life of downtown Toronto. It once served as the city's modest version of Hyde Park Corner and, over the years, curious Sunday crowds might expect to be harangued by speakers as varied as determined suffragists and brown-shirted Nazis. Today, you may see drunks from nearby boarding houses asleep in the sun, circles of men engrossed in picnic-table card games, prostitutes in spike heels strolling alone as dusk falls.

I'd never been in Allan Gardens before, but it was obvious at once that it was also a popular cruising area. I walked round the park a couple of times, and then decided to investigate — the possibility of meeting someone suddenly seemed attractive. Eventually, I came upon a stretch of path running in front of a row of trees and bushes which backed onto a parking area behind the greenhouses. There were a number of men around, one sitting on a bench, and a few more standing at the edge of the

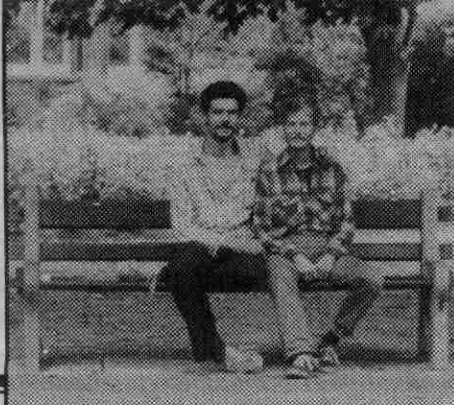
bushes or on the grass between the bushes and the path. As I walked by, I passed another man — Alan McMurray, as I would soon learn — going in the opposite direction, and our eyes met. I found him attractive. When, on looking back over my shoulder, I saw that he had done the same, I walked over towards some bushes. He followed me, and we walked in as far as we could go, ending up next to a tall wire fence.

We'd hardly had a chance even to say anything to each other before we both became aware of a couple of men peering at us through the bushes. I was standing with my back to the fence, and one of them was almost directly in front of me at a distance of six or seven feet, walking slowly back and forth and craning forward to see what we were doing. I didn't notice the other one until Alan turned to one side and said, "Why don't you fuck off?" to a figure I then managed to make out crouching on the ground and trying to look up at us through the shrubbery.

Even at this stage it never occurred to







## GETTING OFF

me that they were policemen, though I had every reason to be aware of the lengths the cops will go to to get gays. I'm a member of the Gay Rights committee of the National Council for Civil Liberties in Britain, and for the past six months I've been working on a booklet on *Gays and the Law*, and interviewing numerous people who've been caught in similar situations. Being a true academic, however, I never made the connection, and just assumed the men were voyeurs. As it happened, on this occasion there was nothing to see — we'd embraced once and kissed, but no more. In any case, it wasn't my intention to have sex there when it could be done in a far more leisurely and comfortable way in the apartment where I was staying.

But that isn't the point.

If I'd been married, or living with friends who didn't know I was gay, I wouldn't have had anywhere else to go — short of paying out ten dollars for the baths. Even if we *had* been doing what both policemen later claimed under oath, no one would have been around to find it indecent unless they had taken the trouble to crawl through the undergrowth to watch. The nearest light was 150 yards away at least, and thick bushes hid us from the public footpath. The most upright Baptist family could have walked past without knowing that they were morally obliged to be disturbed. It was, in effect, a private place and, if we'd been a straight couple, it would almost certainly have been treated as such. As it is, straight couples can do

what we were actually doing *anywhere* they like without being called indecent.

Both of us were disturbed by having these two men staring at us, and we were about to leave when they moved in. I felt a hand on my shoulder, and a whispered "Guess what?" in my ear. I expected to feel a knife go into my ribs, as my first thought was that they were bashers, and they didn't, then or later, either identify themselves as cops or officially arrest us for a particular crime. (One of them subsequently became aware of this omission and said to me at the station, "You heard my pal say we were cops, didn't you?" He hadn't. Both, of course, testified in court that they had.)

They told us repeatedly not to make a fuss and to come quietly. They were afraid, presumably, that other gays nearby would have come to help us. I was so dazed and surprised that I *did* cooperate — and one of them was wearing a gun which he made very sure we could see. They walked us slowly across the grass to where their car was parked at the Jarvis-Carlton Street intersection. The one escorting me refused to take his hand off my belt even though I said I wouldn't make a break for it.

The rest of the evening was like a nightmare. I think it's probably impossible to convey to anyone who hasn't experienced it my sense of humiliation and powerlessness — the feeling of being in the hands of people whose

authority gave them practically unlimited licence to say anything against me with impunity. We were taken to Police Headquarters on Jarvis St and then up to the offices of the Morality Squad, where our pockets were turned out and personal details recorded. We weren't asked to make a statement at any point. Then we were taken downstairs, photographed and fingerprinted. I was struck by the matter-of-factness of the policemen. We weren't abused or pushed around, although one of them tried to unnerve me with the suggestion that I might not be able to get back into England with a criminal record.

We were simply two of the night's quota of faggots.

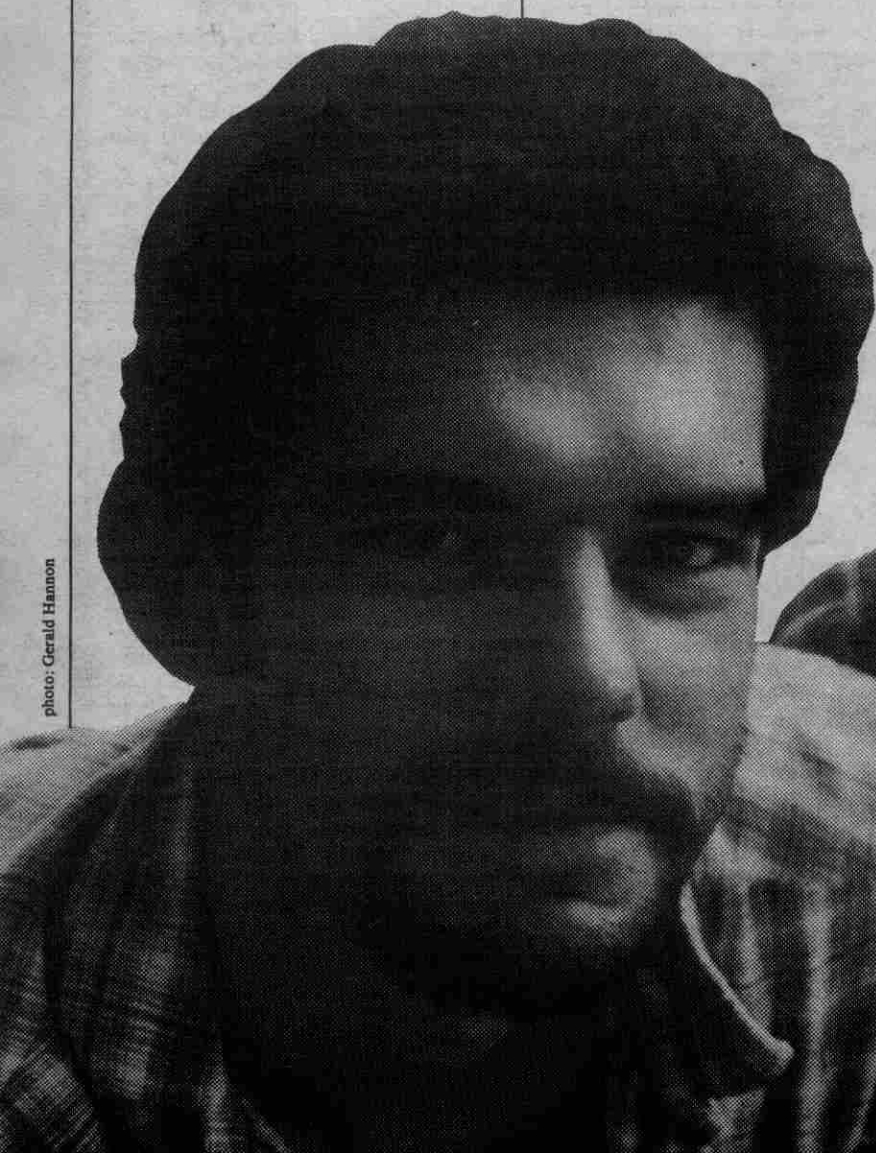
If we pleaded (or were found) guilty, it was just one more conviction. Even if we elected for trial and were acquitted, the police get extra pay for time spent in court to give evidence. Our lawyer told us that one officer had boasted to him that he'd got a holiday in Hawaii out of gross indecency cases. For all they knew, our whole lives might have been brought down in ruins by the public exposure of a trial. In this case, we both just happened to be out not only to our friends but also at work. They didn't know and they didn't care, and treated us with clinical indifference. One of them said he hoped the formalities wouldn't take long, as he wanted to get home to bed early.

We weren't told at any point what we were supposed to have done; we

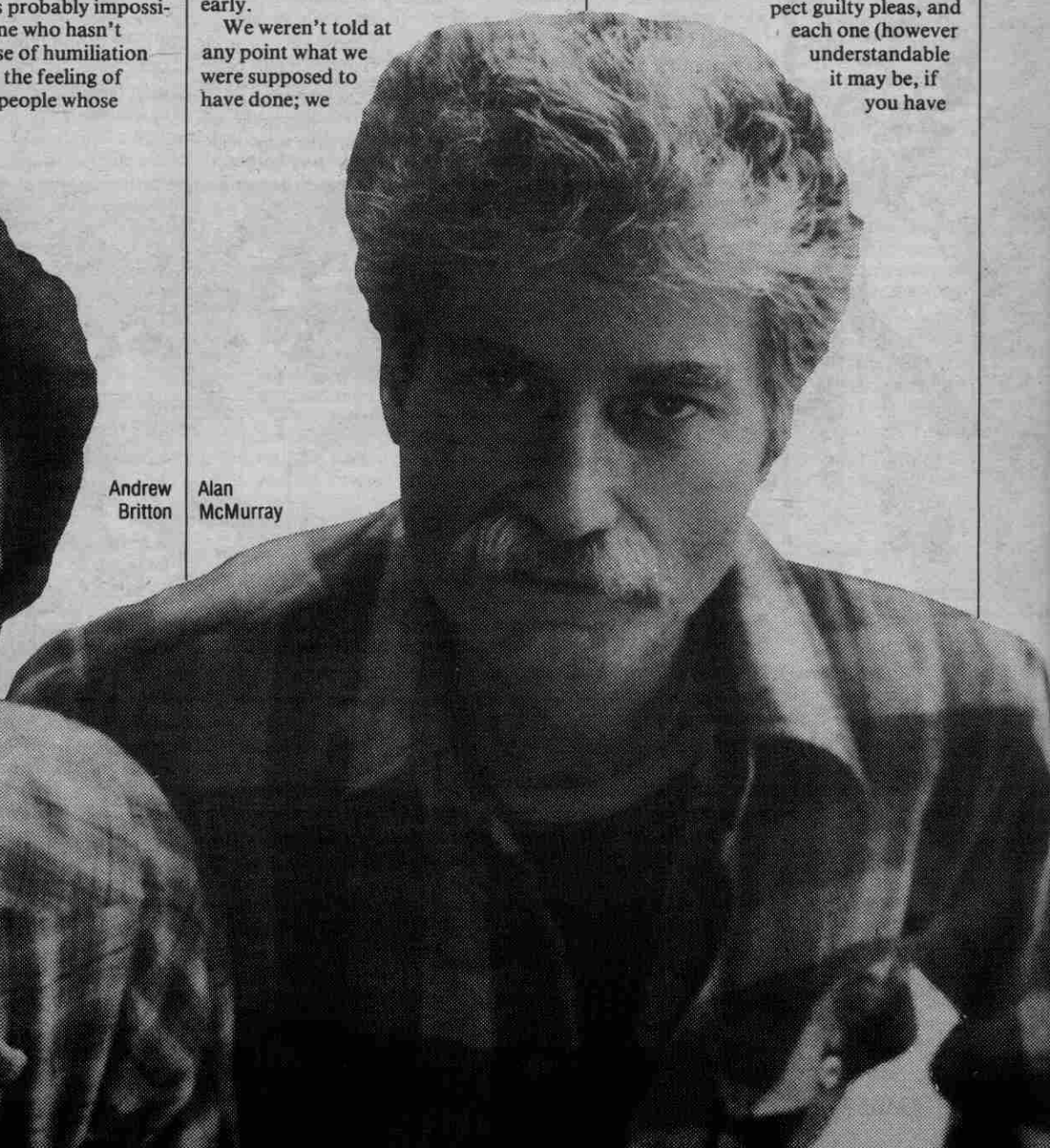
were simply charged with "gross indecency." The nearest we got to our legal right to know the nature of our offence was when one of the officers asked me, out of the blue as we were waiting to be fingerprinted, if I knew what a blow-job was. I said I didn't; the "innocent abroad" seemed one of my few available roles. He persisted: "D'you know what sucking a cock is?" I felt that I couldn't hold out anymore. "We call it a blow-job over here," he replied, with great seriousness.

It seemed farcical even then, but the humour was lost in the general atmosphere of unreality. If I protested or resisted the procedure, I'd end up in a cell with several other charges to my name — resistance of course, always indicating guilt. So I went along with it, and watched myself being reduced to data in a file.

The police have a wonderful ability to instill guilt; the following day, I felt ashamed to tell the friends I was staying with what had happened. Behind my concern not to worry and upset them lay a deeper sense that I *had* done something wrong, and had got my just deserts. The police rely on that as much as anything else — on a sense of shame, fear and humiliation only too easily aroused, even when you *know* that their having been there to arrest us at all should be cause for rage, not shame. The police expect guilty pleas, and each one (however understandable it may be, if you have



Andrew Britton



Alan McMurray



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everything to lose by publicity or simply have difficulty affording a lawyer) reinforces the likelihood that the methods the police use to get convictions will continue. If everyone picked up like us that week (and there were recently twenty-six in one evening in another Toronto park, David Balfour) were to plead not guilty, the courts would be clogged for weeks.

Both Alan and I decided to plead not guilty.

The day after our arrest, I contacted a friend who put me in touch with Paul Trollope, a member of The Body Politic collective who is articulated to the lawyer Mitchell Chernovsky. We told Paul our story and he reinforced our decision with the opinion that we had a good chance. Our first appearance in court — on the Monday after our arrest — was simply a matter of fixing a trial date; we were in and out in about ten minutes. I'd been afraid there would be a long delay before the trial, which would mean staying on in Canada longer than I'd arranged for, and thus losing my charter flight home. Even if it came to that, I was determined to do it. Apart from the moral issue, a guilty plea would have meant a criminal record, and that would probably make it impossible for me to return to Canada. After a submission from Paul, however, a date was fixed for three weeks later — Thursday, July 26.

The waiting was in some ways the toughest part of all. I fluctuated fairly regularly between optimism (of course we'd win), depression (we didn't have a hope) and anger that the thing could ever have happened. Alan and I were continuing to see each other. But simply because it was possible for policemen to spend their time and other people's money sitting in bushes waiting to spin fictions about us, a friendship that could have made a marvellous summer had been placed under needless and ridiculous pressure. Alan was worried for me because he had three previous convictions (the last in 1967) and I had none, and he assumed that this would completely destroy our credibility. The same thing worried me on his behalf; I saw myself being cast as the young tenderfoot being led wickedly astray by an incorrigible felon. We tried to reassure each other — more successfully at some times than others. And Alan became more and more militant as time went by. He told me that all his life he hadn't felt able to do more than sit back and take the kind of thing that was being handed out to us now. But he never would again.

We were confronted at once by two major problems:

(1) Whatever happened, the case was going to turn on a conflict of evidence between us and the police. And the police, in Quentin Crisp's phrase, "never lie." As it was, the conflict wasn't limited only to the question of whether or not sex had taken place. Everything they said — about the brightness of the light at the time, about where they'd been standing in relation to us, about the length of time we'd been in the bushes — directly contradicted what we said. Our lawyer told us that even if the judge wasn't disposed to believe the

police (and he usually would be), the pressures on him to accept their account were enormous. To do otherwise would be to imply that an officer had perjured himself, with possibly adverse consequences to his career. In addition, no judge could get away for long with finding against the representatives of public order. Besides, as Crown Attorney Larry Feldman told me during my cross-examination, neither of the officers knew me and therefore no personal animus could be involved.

This argument assumes, of course, the majestic impartiality not only of the law but also of its executors. It was inconceivable, apparently, that the laws themselves were anti-gay, or that those officers (or any others) could have any other motive than personal dislike for lying about us. Indeed, the Crown Attorney went out of his way at the

beginning of cross-examination to assure me smoothly — and he was very smooth — that he had no anti-gay feeling at all, and that he hoped I believed him. I reflected silently that his liberal conscience didn't make much difference to me either way.

(2) Our case would depend centrally on what kind of judge we had. Several of the judges on the provincial court circuit were demonstrably anti-gay. One of them had sentenced a gay man to fourteen days in jail on an indecent act charge. On the other hand, we might be lucky — we might get a new man who wasn't yet jaded and cynical after twenty years on the bench and who still, in Paul's phrase, "listens to people." If, on entering the courtroom, we discovered we had got the first kind of judge, we decided we would opt for trial by jury in a higher court, with all the extra delay

and expense which that involved. In the event, we were lucky. But that such an issue should arise brought home both the arbitrariness of the outcome and the way in which the cards were stacked against closeted gays as well as lower income groups. Whether or not we'd actually done anything would be the last factor involved in what happened.

We'd been asked to be in court at 10:00 AM, but our case didn't come up until 12:15 — we were the last on the list. In that two and a quarter hours, nine or ten cases were dealt with, and it became apparent from Judge Thomas Mercer's handling of them that he was the best we could have got. A shoplifting case — almost exactly analogous to one which the judge we'd encountered in the conveyor-belt atmosphere of the previous court had handled with monstrous severity — was dismissed on the

## GUESS WHAT...

That hand on your shoulder could be a cop's.  
*The Body Politic's clip-and-save guide to arrest and trial.*

*There are no easy answers. Nothing about the procedure is clear, and the ambiguity is always to the police's advantage, not yours. What follows are guidelines only, but they should help you in most situations.*

• **Ask for police ID.** If you cannot determine that the persons who have just approached you are police officers (if they are in plain clothes, for example), ask them immediately to identify themselves and to show you their badges.

• **Ask whether you're under arrest and what the charge is.** In most circumstances you have the right to straightforward answers to both questions, if they are not already clear to you. The onus, however, is on you to ask, not on the police to tell you. They are under no obligation to inform you of your rights.

• **You're free until arrested.** If you are not under arrest, you have the right to walk away. The police cannot detain you without arresting you first.

• **Do not resist arrest or use force against the police.** You may be badly beaten up and charged with resisting arrest, assaulting police officers or obstructing them. You may feel an arrest is unlawful, but a court will rarely agree.

• **Identify yourself.** If you are under arrest, you must provide the police with your name and address and other information reasonably necessary to identify you. The police will not release you until they have been satisfied as to your identity.

• **Say nothing else.** You are under no obligation to make any statement whatsoever about the circumstances leading to your arrest. If the police are pressuring you, you could say, "I don't wish to say anything at this time. If my counsel advises me to make a statement, then I may do so."

• **Anything you say to the police will almost certainly be used against you at the trial.** It is very difficult to get a statement excluded in court on the grounds that you were beaten or threatened or intimidated into making it, because the police are not likely to admit in court that they took such steps against you. If it is your word against that of two or

three police officers, your chances of being believed are not good.

• **Ask to make a phone call.** If the police are planning to release you within an hour or two on a promise to appear in court, you probably don't need to call anyone. But if the police appear disposed to keep you locked up, you should ask to phone legal counsel or a friend, lover or family member. The police are supposed to allow this, but they don't always comply with such requests. Although the Bill of Rights says you have a right to consult counsel without delay, Canadian courts have not decided, as a consequence, that an accused person prevented from doing so is entitled to an automatic "remedy" like the dropping of charges. You might try later to sue the police, but that procedure is so time-consuming that few people ever try it.

• **Don't give in to "deals."** Do not be intimidated by threats the police may make. Don't be swayed by promises to get you a suspended sentence, a lesser charge, a lighter fine or a lenient judge. They are impossible for the police to carry through.

• **Ask to see a bail justice** if the police do not release you. A justice of the peace on 24-hour call, he or she can decide to release you even if the police have decided not to.

• **You may be free in 24 hours.** If the police do not release you and you are not given the opportunity to speak to the bail justice, the Criminal Code "guarantees" you the right to be brought before a judge or justice "within 24 hours or as soon as

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possible." In Toronto, such appearances take place in Courtroom 23 in the basement of Old City Hall. Ask to speak to Duty Counsel (a lawyer hired by Ontario Legal Aid to give free advice to people who don't have counsel). He or she can advise you of your rights, help you to present your case at bail hearing (where a judge decides if you should be released pending trial) and show you how to apply for Legal Aid and retain counsel for your trial. Duty Counsel can act on bail hearings and speak to the judge on your behalf if you decide to plead guilty, but cannot conduct your trial.

• **Do not plead guilty.** Do not be panicked into this action either on your first appearance in court or later without having discussed your case with gay-positive legal counsel.

• **You or someone else may have to put up bail.** If the circumstances are considered serious enough (depending on the offence, your criminal record, your previous failure to show up in court), you may be required to have a "surety" (a person who signs a promise to pay an amount set by the court if you fail to appear) or you may "enter into a recognizance" (promise to pay the amount yourself if you fail to appear) or you may be required to pay cash bail.

• **See a lawyer.** Do not take legal advice from the police, from friends or from self-appointed individuals who may accost you near the courtroom.

• **Do not assume you are guilty just because the police say you are.** Your guilt or innocence is for the court to decide. Your strategy in court is for you and your lawyer to decide.

• **Prepare for several visits to court.** You will usually make three appearances. On the first, you will merely be asked if you intend to get a lawyer, either privately or through Legal Aid, or if you will defend yourself. If you indicate you will be getting a lawyer, you will be told to return to court in approximately three weeks with the lawyer, or with a letter from the lawyer. At this second appearance, the court will set a date agreeable both to the court and to your lawyer. The third appearance is the trial date itself. (You can sometimes reduce the number to two if you arrange to have your lawyer accompany you on the first appearance.)

• **To find a gay-positive lawyer.** In Toronto, call TAG (964-6600), LOOT (960-3249), or *The Body Politic* (863-6320). Elsewhere, call your local gay or lesbian organization, publication, or telephone information line. □